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Attorneys for Plaintiff AT&T CORP.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AT&T CORP., a New York corporation,

Plaintiff,

v.

INTERSTATE HOLDINGS, LLC
d/b/a CONCORD HILTON,
a California limited liability company,

Defendant.

Case No.: 23-CV-00938-LJC

**JOINT STIPULATED
PROTECTIVE ORDER**
(for standard litigation)

United States District Court
Northern District of California

INTERSTATE HOLDINGS, LLC d/b/a
CONCORD HILTON, a California
limited liability company,

Third-Party Plaintiff,

v.

NETWORK SOLUTIONS, INC., a
California corporation,

Third-Party Defendant.

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for

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1 protection under Federal Rule of Civil Procedure 26(c).

2 2.3 Counsel (without qualifier): Outside Counsel of Record and House
3 Counsel (as well as their support staff).

4 2.4 Designating Party: a Party or Non-Party that designates information or
5 items that it produces in disclosures or in responses to discovery as
6 “CONFIDENTIAL.”

7 2.5 Disclosure or Discovery Material: all items or information, regardless
8 of the medium or manner in which it is generated, stored, or maintained (including,
9 among other things, testimony, transcripts, and tangible things), that are produced or
10 generated in disclosures or responses to discovery in this matter.

11 2.6 Expert: a person with specialized knowledge or experience in a matter
12 pertinent to the litigation who has been retained by a Party or its counsel to serve as
13 an expert witness or as a consultant in this action.

14 2.7 House Counsel: attorneys who are employees of a party to this action.
15 House Counsel does not include Outside Counsel of Record or any other outside
16 counsel.

17 2.8 Non-Party: any natural person, partnership, corporation, association, or
18 other legal entity not named as a Party to this action.

19 2.9 Outside Counsel of Record: attorneys who are not employees of a party
20 to this action but are retained to represent or advise a party to this action and have
21 appeared in this action on behalf of that party or are affiliated with a law firm which
22 has appeared on behalf of that party.

23 2.10 Party: any party to this action, including all of its officers, directors,
24 employees, consultants, retained experts, and Outside Counsel of Record (and their
25 support staffs).

26 2.11 Producing Party: a Party or Non-Party that produces Disclosure or

Discovery Material in this action.

2.12 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.13 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees
4 otherwise in writing or a court order otherwise directs. Final disposition shall be
5 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
6 or without prejudice; and (2) final judgment herein after the completion and
7 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
8 including the time limits for filing any motions or applications for extension of time
9 pursuant to applicable law.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

12 Each Party or Non-Party that designates information or items for protection under
13 this Order must take care to limit any such designation to specific material that
14 qualifies under the appropriate standards. The Designating Party must designate for
15 protection only those parts of material, documents, items, or oral or written
16 communications that qualify – so that other portions of the material, documents,
17 items, or communications for which protection is not warranted are not swept
18 unjustifiably within the ambit of this Order.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations
20 that are shown to be clearly unjustified or that have been made for an improper
21 purpose (e.g., to unnecessarily encumber or retard the case development process or
22 to impose unnecessary expenses and burdens on other parties) expose the Designating
23 Party to sanctions.

24 If it comes to a Designating Party's attention that information or items that it
25 designated for protection do not qualify for protection, that Designating Party must
26 promptly notify all other Parties that it is withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.

6 Designation in conformity with this Order requires:

7 (a) For information in documentary form (e.g., paper or electronic
8 documents, but excluding transcripts of depositions or other pretrial or trial
9 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each
10 page that contains protected material. If only a portion or portions of the material on
11 a page qualifies for protection, the Producing Party also must clearly identify the
12 protected portion(s) (e.g., by making appropriate markings in the margins).

13 A Party or Non-Party that makes original documents or materials available for
14 inspection need not designate them for protection until after the inspecting Party has
15 indicated which material it would like copied and produced. During the inspection
16 and before the designation, all of the material made available for inspection shall be
17 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
18 it wants copied and produced, the Producing Party must determine which documents,
19 or portions thereof, qualify for protection under this Order. Then, before producing
20 the specified documents, the Producing Party must affix the “CONFIDENTIAL”
21 legend to each page that contains Protected Material. If only a portion or portions of
22 the material on a page qualifies for protection, the Producing Party also must clearly
23 identify the protected portion(s) (e.g., by making appropriate markings in the
24 margins).

25 (b) for testimony given in deposition or in other pretrial or trial
26 proceedings, that the Designating Party identify on the record, before the close of

the deposition, hearing, or other proceeding, all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the

1 Protective Order. The parties shall attempt to resolve each challenge in good faith
2 and must begin the process by conferring directly (in voice to voice dialogue; other
3 forms of communication are not sufficient) within 14 days of the date of service of
4 notice. In conferring, the Challenging Party must explain the basis for its belief that
5 the confidentiality designation was not proper and must give the Designating Party
6 an opportunity to review the designated material, to reconsider the circumstances,
7 and, if no change in designation is offered, to explain the basis for the chosen
8 designation. A Challenging Party may proceed to the next stage of the challenge
9 process only if it has engaged in this meet and confer process first or establishes that
10 the Designating Party is unwilling to participate in the meet and confer process in a
11 timely manner.

12 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
13 court intervention, the Designating Party shall file and serve a motion to retain
14 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
15 79-5, if applicable) within 21 days of the initial notice of challenge or within 14 days
16 of the parties agreeing that the meet and confer process will not resolve their dispute,
17 whichever is earlier. Each such motion must be accompanied by a competent
18 declaration affirming that the movant has complied with the meet and confer
19 requirements imposed in the preceding paragraph. Failure by the Designating Party
20 to make such a motion including the required declaration within 21 days (or 14 days,
21 if applicable) shall automatically waive the confidentiality designation for each
22 challenged designation. In addition, the Challenging Party may file a motion
23 challenging a confidentiality designation at any time if there is good cause for doing
24 so, including a challenge to the designation of a deposition transcript or any portions
25 thereof. Any motion brought pursuant to this provision must be accompanied by a
26

1 competent declaration affirming that the movant has complied with the meet and
2 confer requirements imposed by the preceding paragraph.

3 The burden of persuasion in any such challenge proceeding shall be on the
4 Designating Party. Frivolous challenges, and those made for an improper purpose
5 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
6 expose the Challenging Party to sanctions. Unless the Designating Party has waived
7 the confidentiality designation by failing to file a motion to retain confidentiality as
8 described above, all parties shall continue to afford the material in question the level
9 of protection to which it is entitled under the Producing Party's designation until the
10 court rules on the challenge.

11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is
13 disclosed or produced by another Party or by a Non-Party in connection with this
14 case only for prosecuting, defending, or attempting to settle this litigation. Such
15 Protected Material may be disclosed only to the categories of persons and under the
16 conditions described in this Order. When the litigation has been terminated, a
17 Receiving Party must comply with the provisions of section 13 below (FINAL
18 DISPOSITION).

19 Protected Material must be stored and maintained by a Receiving Party at a
20 location and in a secure manner that ensures that access is limited to the persons
21 authorized under this Order.

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
23 otherwise ordered by the court or permitted in writing by the Designating Party, a
24 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
25 only to:

26 (a) the Receiving Party's Outside Counsel of Record in this action, as well

as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation

1 that compels disclosure of any information or items designated in this action as
2 “CONFIDENTIAL,” that Party must:

3 (a) promptly notify in writing the Designating Party. Such notification shall
4 include a copy of the subpoena or court order;

5 (b) promptly notify in writing the party who caused the subpoena or order
6 to issue in the other litigation that some or all of the material covered by the subpoena
7 or order is subject to this Protective Order. Such notification shall include a copy of
8 this Stipulated Protective Order; and

9 (c) cooperate with respect to all reasonable procedures sought to be pursued
10 by the Designating Party whose Protected Material may be affected.

11 If the Designating Party timely seeks a protective order, the Party served with
12 the subpoena or court order shall not produce any information designated in this
13 action as “CONFIDENTIAL” before a determination by the court from which the
14 subpoena or order issued, unless the Party has obtained the Designating Party’s
15 permission. The Designating Party shall bear the burden and expense of seeking
16 protection in that court of its confidential material – and nothing in these provisions
17 should be construed as authorizing or encouraging a Receiving Party in this action
18 to disobey a lawful directive from another court.

19 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
20 IN THIS LITIGATION

21 (a) The terms of this Order are applicable to information produced by a
22 Non-Party in this action and designated as “CONFIDENTIAL.” Such information
23 produced by Non-Parties in connection with this litigation is protected by the
24 remedies and relief provided by this Order. Nothing in these provisions should be
25 construed as prohibiting a Non-Party from seeking additional protections.

26 (b) In the event that a Party is required, by a valid discovery request, to

1 produce a Non-Party's confidential information in its possession, and the Party is
2 subject to an agreement with the Non-Party not to produce the Non-Party's
3 confidential information, then the Party shall:

4 (1) promptly notify in writing the Requesting Party and the Non-Party
5 that some or all of the information requested is subject to a confidentiality agreement
6 with a Non-Party;

7 (2) promptly provide the Non-Party with a copy of the Stipulated
8 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
9 specific description of the information requested; and

10 (3) make the information requested available for inspection by the Non-
11 Party.

12 (c) If the Non-Party fails to object or seek a protective order from this court
13 within 14 days of receiving the notice and accompanying information, the Receiving
14 Party may produce the Non-Party's confidential information responsive to the
15 discovery request. If the Non-Party timely seeks a protective order, the Receiving
16 Party shall not produce any information in its possession or control that is subject to
17 the confidentiality agreement with the Non-Party before a determination by the court.
18 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
19 of seeking protection in this court of its Protected Material.

20 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
22 Protected Material to any person or in any circumstance not authorized under this
23 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
24 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
25 to retrieve all unauthorized copies of the Protected Material, (c) inform the person
26 or persons to whom unauthorized disclosures were made of all the terms of this Order,

1 and (d) request such person or persons to execute the “Acknowledgment and
2 Agreement to Be Bound” that is attached hereto as Exhibit A.

3 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
4 PROTECTED MATERIAL

5 When a Producing Party gives notice to Receiving Parties that certain
6 inadvertently produced material is subject to a claim of privilege or other protection,
7 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
8 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
9 may be established in an e-discovery order that provides for production without prior
10 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
11 parties reach an agreement on the effect of disclosure of a communication or
12 information covered by the attorney-client privilege or work product protection, the
13 parties may incorporate their agreement in the stipulated protective order submitted
14 to the court.

15 12. MISCELLANEOUS

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
17 person to seek its modification by the court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this
19 Protective Order no Party waives any right it otherwise would have to object to
20 disclosing or producing any information or item on any ground not addressed in this
21 Stipulated Protective Order. Similarly, no Party waives any right to object on any
22 ground to use in evidence of any of the material covered by this Protective Order.

23 12.3 Filing Protected Material. Without written permission from the
24 Designating Party or a court order secured after appropriate notice to all interested
25 persons, a Party may not file in the public record in this action any Protected
26 Material. A Party that seeks to file under seal any Protected Material must comply

1 with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant
2 to a court order authorizing the sealing of the specific Protected Material at issue.
3 Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
4 establishing that the Protected Material at issue is privileged, protectable as a trade
5 secret, or otherwise entitled to protection under the law. If a Receiving Party's
6 request to file Protected Material under seal pursuant to Civil Local Rule 79-5 is
7 denied by the court, then the Receiving Party may file the information in the public
8 record pursuant to Civil Local Rule 79-5 unless otherwise instructed by the court.

9 **13. FINAL DISPOSITION**

10 Within 60 days after the final disposition of this action, as defined in paragraph
11 4, each Receiving Party must return all Protected Material to the Producing Party or
12 destroy such material. As used in this subdivision, "all Protected Material" includes
13 all copies, abstracts, compilations, summaries, and any other format reproducing or
14 capturing any of the Protected Material. Whether the Protected Material is returned
15 or destroyed, the Receiving Party must submit a written certification to the Producing
16 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
17 deadline that (1) identifies (by category, where appropriate) all the Protected
18 Material that was returned or destroyed and (2) affirms that the Receiving Party has
19 not retained any copies, abstracts, compilations, summaries or any other format
20 reproducing or capturing any of the Protected Material. Notwithstanding this
21 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
22 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
23 deposition and trial exhibits, expert reports, attorney work product, and consultant
24 and expert work product, even if such materials contain Protected Material. Any such
25 archival copies that contain or constitute Protected Material remain subject to this
26 Protective Order as set forth in Section 4 (DURATION).

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 Dated: March 7, 2024.

MOYE WHITE, LLP

4 *s/Paul R. Franke III*

5 _____
Paul R. Franke III
6 (Admitted *pro hac vice*)

7 **BERLINER COHEN, LLP**

8 Jonathan D. Wolf
Brian L. Shetler

9 Attorneys for Plaintiff AT&T Corp.

10
11 Dated: March 7, 2024.

KENT LAW, P.C.

12 *s/Jonathan D. Kent*

13 _____
14 Jonathan D. Kent

15 Attorneys for Defendant/Third-Party
16 Plaintiff, Interstate Holdings, LLC d/b/a
17 Concord Hilton

18 Dated: March 7, 2024.

DART LAW

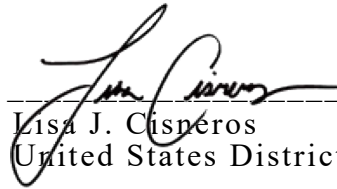
19 *s/Matthew B. Dart*

20 _____
21 Matthew B. Dart

22 Attorneys for Third-Party Defendant,
23 Network One Solutions, Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: March 13, 2024



Lisa J. Cisneros
United States District/Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Northern District of California
on [date] in the case of *AT&T Corporation v. Interstate Holdings, LLC d/b/a Concord
Hilton, et al.*, Case No. 23-cv-00938-LJC. I agree to comply with and to be bound by
all the terms of this Stipulated Protective Order and I understand and acknowledge
that failure to so comply could expose me to sanctions and punishment in the nature
of contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any person
or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Northern District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

1 Printed name: _____

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3 Signature: _____

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